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purpose of showing the understanding of the parties of its terms. *Drinkhouse v. Surette*, 83 Mass., 443. So where there is a mistake in a contract and the true intentions of the parties are not expressed. *Howland v. Blake*, 97 U. S., 624. And it is admissible to explain the meaning as well as their mutual acts, where there is an ambiguity. *Bates v. Dehaven*, 10 Ind., 319. As well as to show the remainder of a contract, which the writings executed by the parties on their face, show not to have been fully expressed therein. *Miller v. Goodrich*, 53 Mo. App., 430. But these contentions must be proved to the exclusion of every reasonable doubt. *Howland v. Blake*, *supra*; *Goldborough v. Ringbold*, 1 Md. Ch. D., 239.

HOMICIDE—PREVENTING ESCAPE OF PRISONER—ARREST FOR MISDEMEANOR.—*LEWIS V. COMMONWEALTH*, 131 SOUTHWESTERN REPORTER, 517.—*Held*, that a police officer has no right to shoot one arrested for a misdemeanor to prevent his escape.

In general a police officer has no right to do great bodily harm to or take the life of a person arrested for a misdemeanor to prevent his escape. *Head v. Martin*, 85 Ky., 480. Such is the case even if the officer has knowledge of the desperate character of the prisoner, although such circumstances may form a question of fact for the jury. *Commonwealth v. Rhoads*, 23 Pa. Super. Ct., 512. Because the officer is never required to retreat, and may meet force with force, in order to subdue the efforts of the prisoner to escape. *Smith v. State*, 59 Ark., 132; *State v. Garrett*, 60 N. C., 144. The officer may use a deadly weapon and even take the life of the prisoner, if such action is necessary in self-defense to save his own life. *Smith v. State*, 59 Ark., 132. But in any case the officer must be careful not to exceed the reasonable necessity of the case. *Dilger v. Commonwealth*, 88 Ky., 550, 560; *Commonwealth v. Max*, 8 Phila., 422. Some few cases hold that an officer can use violence and even take the life of a prisoner arrested for a misdemeanor, if necessary not only for his own protection but to effect his purpose of preventing an escape. *State v. Dierberger*, 96 Mo., 666. And it has been held that flagrant misdemeanors, as in case of riots or dangerous wounds, may justify the killing of the prisoner to prevent his escape, for the presumption is very great that the offense will turn out to be a felony. *State v. McNally*, 87 Mo., 644.

HUSBAND AND WIFE—WIFE'S SEPARATE ESTATE—CONTRACTS ENFORCEABLE—ASSENT OF HUSBAND.—*BUSHNELL V. BERTOLETT*, 69 S. E. 610 (N. C.). *Held*, that where a married woman signed a contract for a lot of apple trees, and after accepting and paying for a part, refuses to accept and pay for the remainder, the contract is not enforceable against her separate estate. Clark, C. J., *dissenting*.

At common law the contracts of a married woman were absolutely void. *Prentiss v. Paisley*, 25 Fla., 927; *Condon v. Barr*, 49 N. J. L., 53. And, independant of statute, her contracts do not personally bind her, even in equity. *Butler v. Buckingham*, 5 Day (Conn.), 492; *Davis v. Smith*,

75 Mo., 219. A married woman has no power to contract unless in direct reference to her separate property. *Stillwell v. Adams*, 29 Ark., 346. Whether the contract of a married woman is in relation to her separate estate is a question of fact. *Stenger Benev. Ass'n v. Stenger*, 54 Neb., 427. To bind the separate property of the wife there must be an express agreement to bind it. It is not enough that she asked credit, and that she had a separate estate, and on this account credit was extended to her. *Dismukes v. Shaffer*, 54 S. W., 671 (Tenn. Ch. App. 1899). Nevertheless, it was held in this case that the separate estate of a married woman is liable for all debts charged thereon either expressly or by fair implication, and is bound by all her contracts on her own behalf which are made upon the credit of such estate, and whether that be so or not must be judged by the circumstances of each particular estate. *Crockett v. Doriot*, 85 Va., 240. It has been expressly decided, limiting this right, that the contract of a married woman can be made good only out of the separate estate which is hers at the time of the contract. *Filler v. Tyler*, 91 Va., 458. In some states a married woman can charge her real estate by such contracts only as are reasonably calculated to make the estate profitable to her, or to preserve it, or to protect her title thereto. *Smith v. Howe*, 31 Ind., 233. The statutes in some states require the husband's consent to the wife's contract before she shall be liable thereon. *Wood v. Potts*, 140 Ala., 425; *Brinkley v. Ballance*, 126 N. C., 393. While in others, a wife's property is her separate estate, in respect to which she may make binding contracts without the assent of the husband. *Grapengether v. Fejervary*, 9 Ia., 163.

JUDGES—QUALIFICATION—RELATION TO PARTIES.—EX PARTE WEST, 132 S. W., 339 (TEX.).—*Held*, a district judge who was a second cousin of plaintiff's wife was disqualified to try the case, so that orders made therein were *coram non judice*.

Under the common law a judge was not disqualified by relationship to a party to a cause. *Brooke and the Earl of Rivers*, Hardres Rep., 503. But it is now generally provided by statute that relationship between the judge and a party litigant disqualifies the judge. *State v. Wail*, 41 Fla., 463; *Horton v. Howard*, 79 Mich., 642; *State v. Foster*, 112 La., 533; *Chase v. Weston*, 75 Ia., 159. And such a provision applies equally to civil and criminal trials. *People v. Connor*, 142 N. Y., 130. Although mere formal and ministerial acts are not void by reason of the disqualification of the judge. *McFarlane v. Clark*, 39 Mich., 44; *State v. Gurney*, 17 Nebr., 523. The relationship, however, to afford ground for disqualification, must exist at the time of the trial. *Patterson v. Collier*, 57 Ga., 419; *Winchester v. Hinsdale*, 12 Conn., 88. Furthermore, a judge can legally recuse himself only where a party to the case has a right to recuse him. *State v. Judges' Tenth Judicial District*, 41 La. Ann., 319. And it has been held that the disqualification of a judge may be waived by consent of the parties. *Buena Vista Bank v. Grier*, 114 Ga., 398. Most courts hold that the fact that a stockholder in a corporation, which is a party litigant, is a relative of a judge, does not disqualify the judge from sitting. *Matter of Dodge and Stevenson Man'f Co.*, 77 N. Y., 101; *Robinson v. Southern*